

Notes in highlights by
W. Havens

PETER HARMER

May 12, 2010

Jimmy Stobaugh
Telesarus Holdings
2649 Benvenue Avenue
Berkeley, California 94704

Dear Mr. Stobaugh,

Please accept this letter as my unconditional authorization to submit in any way to any party including but not limited to the Federal Communications Commission (FCC) information that I am able to provide at any time from whatever source available to me concerning the activities and business dealings of Donald R. DePriest, Sandra DePriest and John Reardon.

Information that has or might be furnished to you is being supplied by me voluntarily, without coercion and without remuneration of any kind. Further, information that has or will be provided has been submitted to you under penalty of perjury and will be accompanied by my statement to that effect and will be truthful and accurate to the best of my knowledge.

I understand and accept that information that I might be able to submit to you might become part of the public domain and might be requested under the Freedom of Information Act and might be disclosed in any FCC decision or action involving your business activity.

Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Peter Harmer

Peter Harmer
PO Box 159341
Nashville, Tennessee 37215

Phone/Fax: (615) 567 6069
Mobile : (615) 962 2145
Email: psrharmer@aol.com

See p. 15 below. The Bank notes that D. Depriest has other court judgements against him, other than the one this Bank got, and that he is likely to file for Chapter 11 bankruptcy. That was in June 2009.

Also, D Depriest's representations and warranties in this \$300,000 Note are clearly false as explained below- falsely stating there were no governmental (which includes FCC) proceedings and court proceeding against him

\$12.00
\$12.00

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Book 2009 Page 340

Liens

Lowndes County, MS

Lisa Younger Nease, Chancery Clerk

ATTEST AND CERTIFY
A TRUE COPY

Clerk

U.S. District Court

Middle District of Tennessee

By: Robi Dal
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED

AUG 12 2009

DAVID CREWS, CLERK

By: [Signature]
Deputy

NO. 3:08-cv-642

JUDGE HAYNES

1:09MC5-JAD

ARC Archive Fee

Total

FIFTH THIRD BANK,

Plaintiff,

v.

DONALD R. DEPRIEST,

Defendant.

ORDER

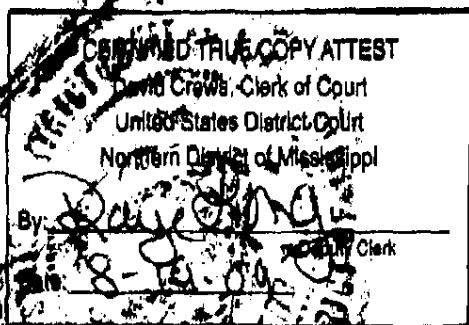
Upon review of the file, this action is reopened. Before the Court is the Plaintiff Fifth Third Bank's motion for a summary judgment, (Docket Entry No. 13) to which the Defendant has not responded within the time provided under the Rules nor has the Defendant requested an extension to do so. The Court ADOPTS the Plaintiff's Statement of Undisputed Facts that the defendant has defaulted on a note owed to the Plaintiff.

Thus, the Plaintiff's motion for summary judgment is GRANTED. Plaintiff is AWARDED judgment against the Defendant in the amount of two hundred fifty nine thousand nine hundred twenty dollars and thirteen cents (\$ 259, 920.13) and thirty eight thousand five hundred fifty two dollars and fifty three cents (\$ 38, 552.32) in attorney's fees and costs.

This is the Final Order in this action.

It is so ORDERED.

ENTERED this the 15th day of July, 2009.



[Signature]
WILLIAM J. HAYNES, JR.
United States District Judge



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I certify this instrument was filed and recorded in the
Liens
Book 2009 Page 340 - 340
Lisa Younger Nease, Chancery Clerk

Butler & Hubbard
Sutcliffe & Page
401 Commerce St.
Haskellville, TN
37129

FIFTH THIRD BANK, N.A.,

V.

Defendant.

Civil Action No. _____

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to herein as the "Indebtedness"). In the event of default, the Note requires Mr. DePriest to pay all of Fifth Third's costs and expenses to enforce the Note, including reasonable attorney fees. A true and correct copy of the Note is attached hereto as Exhibit 1.

7. Because Mr. DePriest failed to repay to Fifth Third the Indebtedness when the Note matured on April 15, 2008, Mr. DePriest is in default under the Note.

8. On May 16, 2008, Fifth Third, through its attorney, sent Mr. DePriest a written notice that he had defaulted under the Note by failing to repay the Indebtedness when the Note matured. Fifth Third's written notice to Mr. DePriest also demanded that the Indebtedness be repaid by June 16, 2008. A true and correct copy of Fifth Third's written default notice is attached hereto as Exhibit 2.

9. Mr. DePriest has not repaid the Indebtedness to Fifth Third.

10. As of June 17, 2008, Mr. DePriest owed Fifth Third, pursuant to the Note, \$297,963.46 in principal (the "Principal"), accrued interest on the Principal, and Fifth Third's costs of collection, including reasonable attorney fees and expenses.

CAUSE OF ACTION ON THE NOTE

11. Fifth Third incorporates by reference the allegations contained in Paragraphs 1-10 above.

12. Mr. DePriest has breached his obligations under the Note by failing to repay the Indebtedness to Fifth Third when the Note matured.

13. Fifth Third has fully performed its obligations under the Note.

14. Fifth Third is entitled to a judgment under the Note for the full amount due thereunder, accrued interest on the Principal as of the date of the entry of judgment, and Fifth Third's costs of collection incurred and to be incurred, including reasonable attorney fees and expenses.

PRAYER FOR RELIEF

THEREFORE, Fifth Third requests that this Court enter a judgment in its favor against Mr. DePriest in an amount equal to the unpaid balance of the Indebtedness as of the date of the entry of judgment, plus one-third of the unpaid balance of the Indebtedness as of the date of the entry of judgment for Fifth Third's costs of collection, and that this Court provide other appropriate relief.

June 26, 2008.

Respectfully submitted,

/s/ F. David T. Arens

F. David T. Arens (BPR No. 25241)

STITES & HARBISON, PLLC

401 Commerce Street, Suite 800

Nashville, TN 37219-2449

(615) 244-5200

Fax: (615) 742-0717

david.arens@stites.com

Counsel for Fifth Third Bank, N.A.

Consumer Note

OFFICER No. 36605
\$300,000.00

NOTE No. 0905578514-00018
December 15, 2007
(Effective Date)
Personal Purpose Note

1. **PROMISE TO PAY.** On or before April 15, 2008 (the "Maturity Date"), the undersigned, **Donald R. DePriest**, an individual residing at 510 7th Street North, Columbus, Lowndes County, Mississippi 39701 ("Borrower") for value received, hereby promises to pay to the order of Fifth Third Bank, N.A., located at 424 Church Street, Suite 600, Nashville, Davidson County, Tennessee 37219 for itself and as agent for any affiliate of Fifth Third Bancorp (together with its successors and assigns, the "Lender") the sum of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) (the "Borrowing"), plus interest as provided herein, less such amounts as shall have been repaid in accordance with this Note. The outstanding balance of this Note shall appear on a supplemental bank record and is not necessarily the face amount of this Note, which record shall evidence the balance due pursuant to this Note at any time. As used herein, "Local Time" means the time at the office of Lender specified in this Note. The maximum interest rate payable under this Note will not exceed 25% per annum or the state usury ceiling, whichever is less.

Lender, in its reasonable discretion, may loan hereunder to Borrower on a revolving basis such amounts as may from time to time be requested by Borrower, provided that: (a) the aggregate principal amount borrowed hereunder at any time shall not exceed the Borrowing, and (b) no Event of Default shall exist or be caused thereby. The entire principal balance, together with all accrued and unpaid interest and any other charges, advances and fees, if any, outstanding hereunder, shall be due and payable in full on the earlier of the Maturity Date or upon acceleration of this Note.

The principal sum outstanding shall bear interest at a floating rate per annum equal to the rate of interest per annum established from time to time by Fifth Third Bank at its principal office as its "Prime Rate", whether or not Fifth Third Bank shall at times lend to borrowers at lower rates of interest or, if there is no such prime rate, then such other rate as may be substituted by Fifth Third Bank for the prime rate (the "Interest Rate"). In the event of a change in said Prime Rate, the Interest Rate shall be changed immediately to such new Prime Rate. Interest shall be calculated based on a 360-day year and charged for the actual number of days elapsed, and shall be payable on the 15th day of each calendar month beginning on January 15, 2008.

Principal and interest payments shall be made at Lender's address above unless otherwise designated by Lender in writing. Each payment hereunder shall be applied first to advanced costs, charges and fees, then to accrued interest, and then to principal, which will be repaid in inverse chronological order of maturity.

2. **RENEWAL.** This Note is issued, not as a payment toward, but as a continuation of, the obligations of Borrower to Lender pursuant to that certain Personal Purpose Note dated December 15, 2006, in the principal amount of \$300,000.00 (together with all prior amendments thereto or restatements thereof, the "Prior Note"). Accordingly, this Note shall not be construed as a novation or extinguishment of the obligations arising under the Prior Note, and its issuance shall not affect the priority of any security interest granted in connection with the Prior Note.

3. **LATE CHARGES.** If any installment stipulated herein is not paid on or before fifteen days after the due date thereof, (whether by acceleration or otherwise) in addition to all other rights and remedies of Lender given by law or the terms of this Note, Borrower promises to pay to Lender a delinquent charge of 5% of the installment. Acceptance of such delinquent charge by Bank shall not constitute a waiver of any default or any rights of Lender hereunder.

4. **PREPAYMENT CHARGE.** Borrower may prepay the obligation under this Note in full at any time prior to maturity. Partial prepayments shall not excuse any subsequent payment due.

5. **INTEREST AFTER MATURITY.** Interest after maturity shall continue at the rate then in effect or as thereafter adjusted in accordance with the variable rate disclosures.



6. **DEFINITIONS.** Certain capitalized terms have the meanings set forth herein, in the Security Agreement, or any other Loan Document. All financial terms used in this Note but not defined herein, in the Security Agreement (if applicable), or any other Loan Document have the meanings given to them by generally accepted accounting principles. All other undefined terms have the meanings given to them in the Uniform Commercial Code as adopted in the state whose law governs this instrument. The following definitions are used herein:

(a) "Lien" means any security interest, mortgage, pledge, assignment, lien or other encumbrance of any kind.

(b) "Loan Documents" means each and every document or agreement executed by any party evidencing, guarantying or securing any of the Obligations; and "Loan Document" means any one of the Loan Documents.

(c) "Loans" means any loans from time to time between Lender and Borrower relating to the Obligations.

(d) "Notes" shall refer collectively to any note entered into from time to time by Borrower in favor of Lender to evidence an Obligation.

(e) "Obligation(s)" means all loans, advances, indebtedness and each and every other obligation or liability of Borrower, or either or any of them, owed to each of Lender and/or any affiliate of Fifth Third Bancorp, however created, of every kind and description whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, participated in whole or in part, created by trust agreement, lease overdraft, agreement or otherwise, whether or not secured by additional collateral, whether originated with Lender or owed to others and acquired by Lender by purchase, assignment or otherwise, and including, without limitation, all loans, advances, indebtedness and each and every obligation or liability arising under the Loan Documents, letters of credit now or hereafter issued by Lender or any affiliate of Fifth Third Bancorp for the benefit of or at the request of Borrower, or either or any of them, all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys' fees incurred or other sums disbursed by Lender hereunder or any other document, instrument or agreement related to any of the foregoing.

7. **REPRESENTATIONS AND WARRANTIES.** Borrower hereby warrants and represents to Lender the following:

(a) **Litigation.** There are no suits or proceedings pending or threatened against or affecting Borrower, and no proceedings before any governmental body are pending or threatened against Borrower.

(b) **Laws.** Borrower is in material compliance with all laws, regulations, rulings, orders, injunctions, decrees, conditions or other requirements applicable to or imposed upon Borrower by any law or by any governmental authority, court or agency.

(c) **Financial Condition.** All financial statements and information relating to Borrower which have been or may hereafter be delivered by Borrower to Lender are true and correct and have been prepared in accordance with past practices consistently applied. Borrower has no material obligations or liabilities of any kind not disclosed in that financial information, and there has been no material adverse change in the financial condition of Borrower nor has Borrower suffered any damage, destruction or loss which has adversely affected its business or assets since the submission of the most recent financial information to Lender.

8. **COVENANTS.** Borrower covenants with, and represents and warrants to, Lender that, from and after the execution date of the Loan Documents until the Obligations are paid and satisfied in full:

There were also other court cases pending against Depriest at this time.



(a) Financial statements. Borrower shall furnish to Lender: (i) an annual personal financial statement within 30 days after the end of each calendar year; and (ii) Within 120 days after the end of each calendar year, a copy of Borrower's compiled tax return by a firm of independent certified public accountants acceptable to Lender and certified as complete and correct; and such other information as Lender may reasonably request.

(b) Taxes. Borrower shall pay when due all taxes, assessments and other governmental charges imposed upon it or its assets, franchises, business, income or profits before any penalty or interest accrues thereon (provided, however, that extensions for filing and payment of such taxes shall be permitted hereunder if disclosed to and consented to by Lender), and all claims (including, without limitation, claims for labor, services, materials and supplies) for sums which by law might be a lien or charge upon any of its assets, provided that (unless any material item or property would be lost, forfeited or materially damaged as a result thereof) no such charge or claim need be paid if it is being diligently contested in good faith, if Lender is notified in advance of such contest and if Borrower establishes an adequate reserve or other appropriate provision required by generally accepted accounting principles and deposits with Lender cash or bond in an amount acceptable to Lender.

(c) Other Amounts Deemed Loans. If Borrower fails to pay any tax, assessment, governmental charge or levy or to maintain insurance within the time permitted or required by this Note, or to discharge any Lien prohibited hereby, or to comply with any other Obligation, Lender may, but shall not be obligated to, pay, satisfy, discharge or bond the same for the account of Borrower. To the extent permitted by law and at the option of Lender, all monies so paid by Lender on behalf of Borrower shall be deemed Obligations and Borrower's payments under this Note may be increased to provide for payment of such Obligations plus interest thereon.

(d) Further Assurances. Borrower shall execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other action, as shall be reasonably necessary from time to time to give full effect to the Loan Documents and the transactions contemplated thereby.

9. DEFAULTS. Upon the occurrence of any of the following events (each, an "Event of Default"), Lender may, at its option, without any demand or notice whatsoever, declare this Note and all Obligations to be fully due and payable in their aggregate amount, together with accrued interest and all fees and charges applicable thereto:

(a) The nonpayment, when the same shall be due, of any installment or other payment on account of the principal or interest of this Note;

(b) The breach of any warranty or agreement by Borrower herein contained, or contained in any mortgage or security agreement executed by Borrower in connection herewith;

(c) The death or incompetency of any individual Borrower;

(d) The default of Borrower under the terms of any lease of, or mortgage on, the premises upon which the Collateral may be located;

(e) Any assignment for the benefit of the creditors of, or the commencement of any bankruptcy, receivership, reorganization, foreclosure, insolvency or liquidation proceedings by or against the Borrower, or any guarantor hereof;

(f) The reasonable determination by Bank at any time that it is inadequately secured hereby with respect to any of Borrower's obligations to Lender;

(g) The creation of any other lien or the issuance of any attachment against the Collateral or the entry of judgment against Borrower;

(h) The occurrence of a default under any other obligation of Borrower, individually or jointly, to Lender or to any other affiliate of Fifth Third Bancorp;

(i) Seizure, levy or confiscation under any legal or governmental process against any Collateral or;

(j) Any sale, conveyance or transfer of any rights in the Collateral securing the Obligations, or any destruction, loss or damage of or to the Collateral in any material respect.

10. REMEDIES. Lender may at its option at any time, without notice, proceed to enforce and protect its rights hereunder by an action at law or in equity or by any other appropriate proceedings; provided that this Note and the Obligations shall be accelerated automatically and immediately if the Event of Default is a filing under the Bankruptcy



Code. Borrower shall pay all costs of collection incurred by Lender, including its reasonable attorney's fees, if this Note is referred to an attorney for collection, whether or not payment is obtained before entry of judgment, which costs and fees are Obligations secured by the Collateral.

Lender's rights and remedies hereunder are cumulative, and may be exercised together, separately, and in any order. No delay on the part of Lender in the exercise of any such right or remedy shall operate as a waiver. No single or partial exercise by Lender of any right or remedy shall preclude any other further exercise of it or the exercise of any other right or remedy. No waiver or indulgence by Lender of any Event of Default shall be effective unless in writing and signed by Lender, nor shall a waiver on one occasion be construed as a waiver of any other occurrence in the future.

11. MULTIPLE OBLIGORS. Each and every reference to and any and all representations, warranties, covenants and undertakings of, Borrower herein, including but not limited to the Events of Default, shall be deemed to apply to each of the undersigned and any and all guarantors of any of the Obligations, jointly and separately.

12. ENTIRE AGREEMENT. Borrower agrees that there are no conditions or understandings which are not expressed in this Note and the documents referred to herein.

13. SEVERABILITY. The declaration of invalidity of any provision of this Note shall not affect any part of the remainder of the provisions.

14. ASSIGNMENT. Borrower agrees not to assign any of Borrower's rights, remedies or obligations described in this Note without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion. Borrower agrees that Lender may assign some or all of its rights and remedies described in this Note without notice to, or prior consent from, the Borrower.

15. MODIFICATION; WAIVER OF LENDER. The modification or waiver of any of Borrower's obligations or Lender's rights under this Note must be contained in a writing signed by Lender. Lender may perform Borrower's obligations, or delay or fail to exercise any of its rights or remedies, without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on another occasion. Borrower's obligations under this Note shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases (i) any of the obligations belonging to any co-borrower, endorser or guarantor (ii) any of its rights against any co-borrower, guarantor or endorser.

16. WAIVER OF BORROWER. Demand, presentment, protest and notice of dishonor, notice of protest and notice of default are hereby waived by Borrower, and any endorser or guarantor hereof. Each of Borrower, including but not limited to all co-makers and accommodation makers of this Note, hereby waives all suretyship defenses including but not limited to all defenses based upon impairment of Collateral and all suretyship defenses described in Section 3-605 of the Uniform Commercial Code (the "UCC"). Such waiver is entered to the full extent permitted by Section 3-605 (i) of the UCC.

17. LOAN CHARGES AND FEES. Lender shall have the authority to impose fees and charges to perform services requested by Borrower or on Borrower's behalf, or to otherwise administer and service this Note. The fees and charges may include administrative costs incurred by Lender and/or in reimbursement of payments made by Lender to third parties. Such fees and charges may include, without limitation, any and all costs or fees associated with the origination and/or servicing of this Note, document copy or preparation fees, transmittal, facsimile or delivery fees, reconveyance and release fees, property inspections and returned check or insufficient funds charges in connection with payments made by Borrower or on Borrower's behalf under this Note and all other such fees for ancillary services performed by Lender for Borrower or at Borrower's request or for services necessitated by or resulting from Borrower's default or malfeasance relating to the Collateral or this Note or incurred by Lender or assessed upon Borrower pursuant to the provisions of this Note or any other document executed in connection herewith. Such fees and charges shall be secured by the Collateral and, unless Lender and Borrower agree to other terms of payment, shall bear interest from the date assessed by Lender at the rate stated in this Note, and in effect from time to time, and shall be payable, with interest, immediately following written demand from Lender to Borrower requesting payment thereof.



18. **GIVING OF NOTICES.** Any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class or certified mail or by prepaid overnight delivery service addressed to Borrower at Borrower's address above. A notice will be delivered or mailed to Borrower at a different address if Borrower gives Lender written notice of Borrower's different address provided that Lender shall not be required to deliver notice to more than one address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower may report a change of address only through that specified procedure. Any notice that must be given to Lender under this Note will be given by first class or certified mail to Lender at the address stated above or to any other address that Lender designates by written notice to Borrower.

19. **GOVERNING LAW; CONSENT TO JURISDICTION.** Except to the extent otherwise specifically required by applicable law, this Note shall be construed and interpreted in accordance with, and governed by, federal law and the law of the State of Tennessee, without reference to its conflict of law provisions, and the obligations, rights, and remedies of the parties hereunder shall be determined in accordance with such laws. Borrower agrees that service of process in any such proceeding shall be effective if mailed to Borrower at the address set forth herein. In the event that any provision of this Note is limited, restricted, prohibited or unenforceable under applicable law, such provision shall be construed and enforced as if it had been more narrowly drawn so as not to be in conflict with applicable law. The validity, legality and enforceability of the remaining provisions of this Note shall not in any way be affected or impaired thereby. If any part of this Note is determined to be invalid, then Lender may enforce the remainder of this Note as if the invalid provision did not exist. Lender shall be afforded the full benefit of all of Borrower's waivers and contractual agreements made in connection with the Loan that are permitted to be given under applicable law.

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Borrower which exceeded permitted limits will be refunded. Lender may choose to make this refund by reducing the principal owed under this Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without penalty.

20. **JURY WAIVER.** BORROWER, AND ANY ENDORSER OR GUARANTOR HEREOF, WAIVE THE RIGHT TO A TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE AND THE ABOVE INFORMATION AT THE TIME OF SIGNING.

NOTICE TO COSIGNER: You are being asked to become liable on this debt. Think carefully before you do. If Borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the Borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount. The Bank can collect this debt from you without first trying to collect from the Borrower. The Bank can use the same collection methods against you that can be used against the Borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become part of YOUR credit record.

The following notice is applicable if this agreement involves a purchase of goods or services to which the FTC HOLDER in DUE COURSE RULE applies.

IF THE COLLATERAL IS TO BE USED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES:
NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF THE GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

If you believe information we report about the credit history on your account(s) is incomplete, inaccurate or outdated, you must provide us with clear written documentation including the name on the account, the account number and the nature of the disputed information. Please write to us at:



Fifth Third Bank, N.A.
424 Church Street; Suite 600
Nashville, Tennessee 37219
Davidson County, Tennessee

NAME AND ADDRESS:

(Donald R. DePriest
510 7th Street North
Columbus, MS 39701

BORROWER:



(Signature)

Donald R. DePriest

(Print Name)



**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

FIFTH THIRD BANK, N.A.,

Plaintiff,

v.

DONALD R. DEPRIEST,

Defendant.

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Civil Action No. 3:08-cv-0642

JUDGE HAYNES

**AFFIDAVIT OF DONNA L. ROBERTS IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

1. My name is Donna L. Roberts. I am an attorney with the law firm of Stites & Harbison, PLLC, and I am licensed to practice law in the State of Tennessee, and admitted to practice before the United States District Court for the Middle District of Tennessee.

2. I have first-hand knowledge of the facts set forth herein.

3. My firm has been retained to represent Fifth Third Bank, N.A., ("Fifth Third").

4. I am submitting this affidavit in support of Plaintiff's Motion for Summary Judgment against the defendant Donald R. DePriest (the "Defendant" or "DePriest").

5. The forbearance agreement (the "Agreement") executed by Defendant provides for the recovery of attorney fees incurred by Fifth Third due to a default by Defendant with respect to his obligations to the Fifth Third. This includes attorney fees incurred as part of the cost of collection. Specifically, the Agreement states:

Subject to the terms of this Agreement, Debtor agrees to pay on demand all of Lender's out-of-pocket costs and expenses, including attorney fees and expenses, during the Forbearance Period, incurred in connection with any of the following: (i) the negotiation and drafting of this Agreement or the enforcement of any rights hereunder or under the Note; (ii) any action, including the commencement of or participation in litigation, taken by Lender to assist in the collection of the Indebtedness or to enforce, protect, or perfect any rights or interests related thereto and any collateral therefore; (iii) any actions taken as part of protecting and/or defending Lender as a creditor in a bankruptcy or insolvency case, including without limitation the filing of claims, motions, for relief from stay, motions to dismiss, objections to sales of property, objections to proposed plans of reorganization, or objections or other responses to avoidance or other action related to Lender. Any rights to payment granted under this section are in addition to and not in lieu of any rights given under the Note, which shall be in no way limited hereunder.

A true and correct copy of the Agreement is attached hereto as Exhibit A.

6. I have personally, on several occasions, attempted to obtain payments through Mr. DePriest's counsel. No payments have been made since December 2008. On March 19, 2009, I served upon Defendant a notice of default. A true and correct copy of the Notice of Default is attached hereto as Exhibit B. Defendant did not respond to my letter.

7. My time has been spent in this case reviewing the loan and its history and drafting and revising a motion for summary judgment and supporting papers thereto. Further, the attorney in my firm who initially handled this case for Fifth Third, David T. Arens, spent time reviewing the loan and its history; drafting or revising drafts of Fifth Third's Complaint; drafting or revising drafts of the forbearance agreement entered into between the parties; and attempting to enforce the terms of the forbearance agreement. While Mr. Arens is no longer with the firm of Stites & Harbison PLLC, my review of the file confirms that he performed the work just described.

8. In awarding a fee, the Court may consider the following factors in accordance with Rule 1.5 of the Tennessee Rules of Professional Conduct:

(a) The Defendant did not file an answer to Fifth Third's Complaint within the time required by law, thus necessitating motions for extensions of the Initial Case Management Conference scheduled in this matter. Mr. Arens subsequently filed a motion on behalf of both parties seeking to stay the proceedings as the parties attempted a non-judicial resolution of Defendant's debt obligation to Fifth Third.

(b) I have researched and prepared a motion for summary judgment and supporting papers against the Defendant.

(c) As a result of the Defendant's default on the forbearance agreement, Fifth Third is seeking and may obtain a money judgment against the Defendant. Such a judgment may take years to collect. In my time as an attorney, I have observed that the attorney fees and expenses for work done after obtaining a judgment can substantially exceed the attorney fees and expenses incurred prior to obtaining the judgment. Post-judgment collection work is labor intensive, and there are often difficult issues involved. I believe that a high degree of skill is required to collect judgments.

(d) In light of the amount owed by the Defendant and the costs of not only obtaining a judgment against the Defendant, but also collecting on such a judgment, I believe that an award of attorney fees and expenses equal to fifteen percent (15%) of the amount of the outstanding principal balance owed by the Defendant is a reasonable fee. In collection actions involving negotiable instruments, it is reasonable and customary for plaintiff's counsel to be awarded attorney fees and expenses of up to *one-third* (33.3%) of the total amount owing, plus interest and costs. This is reasonable and customary for all such actions located within the Middle District of Tennessee. Here, Fifth Third only seeks to recover *fifteen percent* (15%) of the total amount owed by Defendant. The total amount of this fifteen percent award is \$38,552.32. A fifteen percent attorney fee in the

amount of \$38,552.32 is warranted not only to cover the fees and expenses incurred by Fifth Third to date, but also in light of the substantial fees and expenses that will be necessary to recover the amounts due and owing to Fifth Third. Civil judgments unrelated to this action against DePriest have been entered by other courts. Furthermore, it is likely that Defendant may attempt to file for protection under the provisions of Title 11 of the United States Bankruptcy Code, which would necessitate the filing of dischargeability actions by Fifth Third against Defendant. As a result, the post-judgment legal fees and expenses that Fifth Third will have to incur to collect on this default judgment against Defendant will likely be substantial.

(e) Tennessee case law indicates that a court is not required to award a percentage recovery even if the contract specifies, but the cases do not prohibit a percentage recovery and indicate that the Court should make these decisions based on the circumstances of each case. *See, e.g., Reagan v. Malone*, Case No. 03A01-9707-CH-00281, 1998 Tenn. App. LEXIS 299 (April 30, 1998); *Taylor v. T&N Office Equipment, Inc.*, Case No. 01A01-9609-CV-00411, 1997 Tenn. App. LEXIS 352 (May 23, 1997) (copies attached).

(f) Based on my experience, the fees charged by Stites & Harbison PLLC are customarily charged in Tennessee by other lawyers for similar legal services.

(g) Stites & Harbison PLLC has been representing Fifth Third for several years and often handles defaulted loans for Fifth Third in Tennessee.

9. On behalf of Fifth Third, I respectfully request an attorney fee equal to fifteen percent (15%) of the outstanding amount of the principal balance owed by the Defendant to Fifth Third to cover all fees and expenses of Fifth Third pre- and post-judgment, or \$38,552.32.

FURTHER THE AFFIANT SAYS NOT.

Donna L. Roberts
Donna L. Roberts

Sworn to and subscribed before me
this 2nd day of June, 2009.

Malinda K. Wilson

Notary Public

My Commission Expires: March 20, 2010



My Commission Expires MAR. 20, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 2nd day of June, 2009 upon:

Donald R. DePriest 510 7 th Street North Columbus, MS 39701	David L. Sanders, Esq. 215 Fifth Street North P.O. Box 1366 Columbus, MS 39703
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s/ Donna L. Roberts

Donna L. Roberts

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